IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

RSA.No. 700 of 2007()

AS.109/2004 of SUB COURT, OTTAPPALAM
OS.36/1997 of MUNSIFF COURT, OTTAPPALAM

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: APPELLANT/APPELLANT/15TH RESPONDENT/15TH DEFENDANT

CHANDRIKA, AGED 63 YEARS, D/O.DECEASED KOTHAMMA, PALLIALIL HOUSE, MUNDAMUKA AMSOM, CHUDUVALATHUR DESOM, OTTAPALAM TALUK, REP.BY POWER OF ATTORNEY HOLDER MISS.NEENDOOR SINDHUBALAKRISHNA ADV.AGED 29 YEARS, D/O.PALLIALIL CHANDRIKA, SANTHOSH BHAVAN,KULAPULLY AMSOM,DESOM IN OTTAPALAM

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS: RESPONDENTS/PETITIONERS 1 TO 5 & RESPONDENTS 1 TO 14/PLAINTIFFS 1 TO 5 AND DEFENDANTS 1 TO 14.

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1. PRABHAVATHI, AGED 73 YEARS, D/O.PALLIALIL DECEASED KOTHAMMA.

2. KARTHIAYANI, AGED 68 YEARS, D/O.PALLIALIL DECEASED KOTHAMMA.

3. SARADA, AGED 65 YEARS, D/O.PALLIALIL DECEASED KOTHAMMA.

4. SUBHADRA, AGED 57 YEARS, D/O.PALLIALIL DECEASED KOTHAMMA.

5. RUGMINI, AGED 52 YEARS, D/O.PALLIALIL DECEASED KOTHAMMA.

6. CHINNAMMU, AGED 53 YEARS, W/O.PALLIALIL DECEASED VASU, S/O.PALLIALIL DECEASED KOTHAMMA.

7. ASHA, AGED 32 YEARS,
D/O.PALLIALIL DECEASED VASU.

8. ASOKAN, AGED 28 YEARS, S/O. -DO-

9. AJITHA, AGED 27 YEARS, D/O. -DO-

10. NANIKUTTY, AGED 67 YEARS (DIED)
W/O.PALLIALIL DECEASED VELU.

11. NANDAGOPALAN, AGED 45 YEARS (DIED)
S/O.PALLIALIL DECEASED VELU.

12. MURALEEDHARAN, AGED 42 YEARS,
S/O. -DO-

13. SASIDHARAN, AGED 39 YEARS, S/O. -DO-

14. SUGUNA, AGED 44 YEARS, D/O. -DO-

15. LATHA, AGED 38 YEARS, D/O. -DO-

16. SUNITHA, AGED 24 YEARS, D/O. -DO-

17. KRISHNADAS, AGED 30 YEARS,
S/O.PALLIALIL DECEASED,
KARUPPAN @ KRISHNANKUTTY.

18. KRISHNAKUMAR, AGED 28 YEARS,
S/O. -DO-

19. MADHAVI, AGED 74 YEARS,
D/O.PALLIALIL DECEASED KOTHAMMA.

20. SUPPLEMENTAL RESPONDENTS

SHOBANA, AGED 40 YEARS,
W/O.PALLIALIL DECEASED NANDAGOPALAN.

21. SOORAJ, AGED 20 YEARS,
S/O.PALLIALIL DECEASED NANDAGOPALAN.

22. SWAPNA, AGED 19 YEARS, D/O. -DO-

23. SUMESH, AGED 13 YEARS (MINOR),
S/O. -DO-
REPRESENTED BY GUARDIAN AND NEXT FRIEND MOTHER
SHOBANA.
ALL ARE RESIDING AT MUDAMUKA AMSOM, CHUDUVALATHUR
DESOM IN OTTAPALAM TALUK.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION

ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 700 OF 2007

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Dated this the 21st day of November, 2007

JUDGMENT

Appellant is the 15th defendant in O.S.36/1997 on the file of Munsiff Court, Ottappalam. A preliminary decree was passed as early as 10.6.1998. Subsequently final decree was also passed. Appellant filed A.S.109/2004 challenging the final decree before Sub Court, Ottappalam. That appeal was filed after the period of limitation. Along with the first appeal, appellant filed I.A.1664/2004 an application under section 5 of the Limitation Act to condone the delay of 420 days in filing the appeal. Learned Sub Judge on the evidence of appellant as PW1 and the doctor as PW2 and marking medical certificate Ext.A1, dismissed the application holding that sufficient cause was not shown for the inordinate delay. Learned Sub Judge found that grounds taken in the petition and sought to be proved are

contradictory and in such circumstance the delay cannot be condoned. It is challenged in the second appeal contending that in the interest of justice first appellate court should have condoned the delay and granted an opportunity to the appellant to have a decision on merits. It was argued by the learned counsel that apart from the appellant, doctor was examined as PW2 and medical certificate was marked as Ext.A1 and in such circumstance, dismissal of the application was unjustified and an opportunity is to be granted to the appellant to have a decision on merits.

2. The only question for consideration is whether dismissal of the application filed under section 5 of the Limitation Act was just and proper. Admittedly there was a delay of 420 days in filing the first appeal. What was contended by appellant in her affidavit, in support of the application for condoning the delay, was that she was laid up due to "rakthavatham" and therefore she could not file an appeal in time and it is to

be condoned. It is in support of that case PW2 was examined. The evidence of PW2 was that appellant was under his treatment for rakthavatham since January, 2003. But Ext.A1 is dated 18.1.2006. The certificate shows that appellant was under the treatment of PW2 for three years and prolonged treatment is required to regain normal health. But in cross examination the doctor admitted that he saw the patient for the first time on 18.1.2006 and Ext.A1 certificate was issued at that time. It is for this reason, learned Sub Judge found that neither Ext.A1 certificate nor the evidence of PW2 is insufficient to prove the illness, which prevented the appellant from filing the appeal. Learned Sub Judge also noted that the evidence of PW1 establishes that she was receiving pension through out by going to the treasury during the relevant period and in such circumstance, her case that because of the illness she could not file an appeal is not correct. It is under such circumstance application dismissed. I

do not find any reason to interfere with that order. As there is no substantial question of law involved in the appeal, it is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006